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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 74-1517

HELIX WATER DISTRICT, *Petitioner,*

v.

CAPITAN GRANDE BAND OF MISSION INDIANS, *Respondent.*

Brief of Respondent in Opposition to Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

RONALD ALBU
GEORGE FORMAN
California Indian Legal Services
Post Office Box 1868
1860 South Escondido Boulevard
Escondido, California 92025
Telephone: (714) 746-8941

BRUCE R. GREENE
Native American Rights Fund
1506 Broadway
Boulder, Colorado 80302
Telephone: (303) 447-8760

Attorneys for Respondent

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

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INTRODUCTION

The Capitan Grande Band of Mission Indians (Respondent and hereinafter "the Band"), brought this action against the Helix Water District (Petitioner and hereinafter "Helix"), in the United States District Court for the Southern District of California seeking, as part of its relief, damages for the unlawful possession of its real property held in trust by the United States for the benefit of the Band. Helix moved to dismiss on six grounds, all of which were

rejected by the District Court except the issue of laches, which was reserved for later ruling. On Helix's motion, the District Court on September 10, 1973, certified for interlocutory appeal to the United States Court of Appeals for the Ninth Circuit, pursuant to 28 U.S.C. § 1292(b), the sole issue of the applicability of the California state statutes of limitation to the Band's trespass claim. On October 11, 1973, the Court of Appeals for the Ninth Circuit granted Helix leave to appeal. On March 14, 1975, the Court of Appeals for the Ninth Circuit affirmed the decision of the District Court.

A. Opinions Below

At the time Helix filed its petition for writ of certiorari, the Court of Appeals decision had not yet been reported. It has now been reported at 514 F.2d 465 (9th Cir. 1975).

B. Question Presented

Did Congress, when it enacted P.L. 83-280 (28 U.S.C. § 1360), make the California state statutes of limitations applicable to a suit by a federally recognized Indian band for money damages arising out of the unlawful use of property held in trust for the benefit of the Indian band by the United States?

THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE DENIED

The Band submits that Helix's petition for writ of certiorari should be denied for the following reasons:

1. Helix asserts, but fails to show, that the District Court and the Court of Appeals decisions are contrary to decisions of this Court or conflict with decisions of other courts. So far as the Band is aware, no court

has reached a result contrary to the Ninth Circuit's decision in this case that state statutes of limitations do not apply to actions by Indian bands for damages arising out of the wrongful use and possession of their property held in trust by the United States.

The cases cited by Helix for the proposition that the Ninth Circuit's decision in the instant case is contrary to existing authority interpreting the scope of state jurisdiction granted by P.L. 83-280 are easily distinguishable. Those cases deal with the applicability of state fire break laws to Indian lands, *People* v. *Rhoades,* 12 Cal.App.2d 720 (1970), *cert. denied,* 404 U.S. 823 (1971); the applicability of county anti-gambling ordinances and zoning laws, *Rincon Band of Mission Indians* v. *County of San Diego,* 495 F.2d 1 (9th Cir. 1974), *cert. denied,* — U.S. —, 419 U.S. 1008 (1974) and *Agua Caliente Band of Mission Indians Tribal Council* v. *City of Palm Springs,* 347 F.Supp. 42 (C.D. Cal. 1972), *vacated* by the Ninth Circuit in an unpublished order dated January 24, 1975;[1] and the applicability of state taxes to the sale of cigarettes by Indians taking place on restricted land, *Tonasket* v. *State of Washington,* 79 Wash.2d 607 (1971), *vacated* and *remanded,* 411 U.S. 451 (1973), *aff'd.,* 84 Wash.2d

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[1] Helix states that the Ninth Circuit reversed the District Court on other grounds in *Rincon Band of Mission Indians* v. *County of San Diego, supra.* In fact the Ninth Circuit dismissed the complaint and held that the district court lacked jurisdiction because of failure to meet the case or controversy requirement. The case, therefore, has no precedential value.

Agua Caliente Band of Mission Indians Tribal Council v. *City of Palm Springs, supra,* was vacated by the Ninth Circuit in an unpublished opinion ordering the District Court to build a record since the Ninth Circuit held that there were insufficient facts in the record as constituted upon which to render a decision. That case also, therefore, has no precedential value.

164 (1974), *appeal dismissed,* 43 L.Ed.2d 387 (1975). In short, these cases simply do not deal with the issue before the Ninth Circuit in the instant case—namely, whether Congress, when it passed P.L. 280, 28 U.S.C. § 1360, intended to apply California's statute of limitations to cut off a federally recognized Indian Tribe's claim for trespass to trust land.

2. The Court of Appeals properly constructed P.L. 280 not to apply the California statute of limitations to cut off the Band's claim for trespass to their reservation lands because to do so would have resulted in the loss of all historical causes of action as of the effective date of the Act. With respect to this issue, the Court of Appeals stated:

> We also note the effect of the construction of P.L. 280 urged by appellant [Helix]. To apply the California statutes of limitations without qualification would bar appellee's suit even if it had been filed on the date that P.L. 280 became law. Such a result would be discordant with the Supreme Court's view that the constitutionality of statutes of limitations depends upon whether "a reasonable time is given for the commencement of an action before the bar takes effect."

514 F.2d at 468. (citations omitted)

Helix vainly argues, at pages 9 and 10 of its petition, that there are no constitutional infirmities associated with its interpretation of P.L. 280 because Indians in California could have sued *before* the effective date of the Act. However, this argument simply misses the point. The Court of Appeals correctly ruled that Congress' " . . . failure to preserve such claims in any manner provides strong reason for interpreting

P.L. 280 in a manner that does not suggest constitutional difficulties." 514 F.2d at 469.

3. It is important to note that although P.L. 280 transfers federal jurisdiction to certain states over civil causes of action " . . . between Indians or to which Indians are parties . . . ", it does not confer state jurisdiction over actions involving Indian *bands or tribes.* Thus, P.L. 280 does not constitute a waiver of an Indian band's immunity from suit. (Compare the conferral section, 28 U.S.C. § 1360(a), with the savings clause, 28 U.S.C. § 1360(b).) While Congress has plenary authority to waive a tribe's immunity from suit, it is well settled that waivers of immunity must be explicit and exceptions thereto cannot be implied. See *United States* v. *United States Fidelity & Guaranty Co.,* 309 U.S. 506 (1940); *Soriano* v. *United States,* 352 U.S. 270, 276 (1957); and *United States* v. *Sherwood,* 312 U.S. 584, 590 (1941), and cases cited therein.

4. The conferral section of P.L. 280, 28 U.S.C. § 1360(a), gave the state of California jurisdiction to hear civil disputes between individual Indians and civil causes of action in which Indians are parties, which, prior to the passage of the Act could not have been heard in state court. The critical language in § 1360(a) provides that California shall have:

> . . . jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country . . . to the same extent that such State or Territory has jurisdiction over other civil causes of action . . .

Had Congress intended to include Indian bands within the term "Indians" as used in § 1360(a), it would be

inconsistent in the savings clause of the same statute, § 1360(b), to refer to property rights belonging to "any Indian or Indian tribe, band or community" since a broad reading of "Indian" in § 1360(a) would render references in § 1360(b) to an Indian tribe, band or community redundant and superfluous.

The Court of Appeals properly relied upon the legislative history of P.L. 280, H.R. Rep. No. 848 at 5, S.Rep. No. 699 at 5, 2 U.S. Code Cong. & Admin. News 1953, at p. 2411, which states, "[P]rovision was made for permitting the California State Courts to adjudicate civil controversies of any nature affecting Indians within the State, *except where trust or restricted property was involved.*" (emphasis added.)

5. With respect to the applicability of 28 U.S.C. § 2415, the Band's position before the Court of Appeals was that there was no applicable statute of limitations, state or federal. But, should there be one applicable at all, it was 28 U.S.C. § 2415, following the reasoning of the Ninth Circuit in *Agua Caliente Band of Mission Indians* v. *County of Riverside,* 442 F.2d 1184 (9th Cir. 1971), *cert. denied,* 405 U.S. 933 (1972); and *Moses* v. *Kinnear,* 490 F.2d 21 (9th Cir. 1973).

The Band agrees with the concurring opinion of Judge Miller wherein he reasoned that it was unnecessary to decide the applicability of § 2415 because the period provided therein had not yet run when the Band filed its lawsuit. Since no claim was made that the Band's cause of action was barred by § 2415, the issue was not properly before the Ninth Circuit, and, as such, the Court's ruling is mere *dicta,* not binding on this or any other Indian tribe or band.

CONCLUSION

Contrary to Helix's assertions about the weight of authority in this area and conflicts with other decisions, the Band submits that no such conflicts exist. The Court of Appeals properly construed P.L. 280 and Helix's petition for writ of certiorari should be denied.

Respectfully submitted,

RONALD ALBU
GEORGE FORMAN
California Indian Legal Services
Post Office Box 1868
1860 South Escondido Boulevard
Escondido, California 92025
Telephone: (714) 746-8941

BRUCE R. GREENE
Native American Rights Fund
1506 Broadway
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Attorneys for Respondent

By: .....
BRUCE R. GREENE